PARTIES:	IN RE THE LEGAL PRACTITIONERS ACT APPLICATION FOR ADMISSION TO PRACTISE BY DAVID SELVARAJAH VADIVELOO
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT EXERCISING TERRITORY JURISDICTION
FILE NO:	LP3 of 1996
DELIVERED:	6 February 1996
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JUDGMENT OF:	Kearney J

CATCHWORDS:

Legal Practitioners - Qualifications and admission - Northern Territory - Whether applicant complied with requirements for practical training by way of Articles of Clerkship - Whether Master solicitor a solicitor practising "on his or her own account or in partnership".

Legal Practitioners Rules (NT) r22(1)(a)

Downey v O'Connell [1951] VLR 117, followed

Legal Practitioners - Qualifications and admission - Northern Territory - Legal Practitioners Admission Board - Significance of Board's certificate that applicant has complied with practical requirements for admission.

Re Mallett (1989) 95 FLR 63, distinguished.

Legal Practitioners Rules (NT), r20

REPRESENTATION:

Counsel:

Applicant:	G.J. Stirk
Law Society of the Northern Territory:	D. M. Elliott

Solicitors:

Applicant:	McBride & Stirk
Law Society of the Northern Territory:	Law Society of the Northern Territory

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IN THE SUPREME COURT OF
THE NORTHERN TERRITORY
OF AUSTRALIA
AT ALICE SPRINGS

No LP 3 of 1996

IN THE MATTER OF the Legal Practitioners Act

AND IN THE MATTER OF an application by **DAVID SELVARAJAH VADIVELOO** for admission as a Legal Practitioner

CORAM: KEARNEY J

REASONS FOR DECISION

(Delivered 6 February 1996)

I ruled this morning on a contested application by David Selvarajah Vadiveloo ("the applicant") of 18 January 1996 for admission to practise as a legal practitioner. These are the reasons for that ruling.

The requirement for admission to practise

The requirements for admission to practise law in the Territory, including the service of articles of clerkship, have since 1 October 1993 been spelled out in the Legal Practitioners Rules ("the Rules") made pursuant to the s11(1) of the Legal Practitioners Act ("the Act"). The applicant has made his application under r7. Before

granting an application the Court is required by r8(c) to be satisfied (inter alia) that the applicant -

> "has complied with the practical requirements for admission as *required by these Rules or as directed under these Rules*" (emphasis mine)

Rule 11 spells out the "practical requirements for admission" which the Rules require. For present purposes the relevant requirement is r11(1)(a) which requires the applicant to have successfully completed -

> "not less than 1 year's satisfactory service *under Articles of Clerkship under these Rules*." (emphasis mine)

Rule 11(3) qualifies the requirement in r11(1)(a), viz:-

> "Notwithstanding subrule(1), the Court may, if it is of the opinion that a person has had experience in the practice of law in Australia other than that specified in that subrule, grant the applicant such exemption from this rule as it considers proper in the circumstances."

Rule 20 provides:-

> "The Admission Board shall, in respect of an application for admission to practise as a legal practitioner of the Court under rule 7, make a report in writing to the court stating whether, in the opinion of the Board, the applicant is entitled to apply to be admitted to practise... ."

The vital provision in this application is r22(1)(a) which provides:-

> "Subject to this Part, a person may enter into articles of clerkship with a person who is -
>
> (a) a *legal practitioner* who holds an unrestricted practising certificate and is *practising as a solicitor or barrister and solicitor on his or her own account or in partnership*." (emphasis mine)

The other provisions of r22 list the other persons with whom a person may enter into articles of clerkship, viz:-

> "(b) the Secretary, within the meaning of the *Law Officers Act;*
>
> (c) the Director of Public Prosecutions, within the meaning of the *Director of Public Prosecutions Act*;
>
> (d) the Director of Legal Aid, within the meaning of the *Legal Aid Act*; of
>
> (e) a person authorized under section 55E(4) of the *Judiciary Act 1930* of the Commonwealth to act in the name of the Australian Government Solicitor."

I note in passing that it appears desirable that pars(c) and(d) be amended, to take account of the fact that branch offices of those Darwin-based organisations are located in Alice Springs, headed by senior legal practitioners, in light of the need to meet the legitimate desire of Alice Springs law graduates to engage in articles of clerkship under the Rules.

The application for admission

On the face of it, the applicant appears to have complied with all of the requirements of the Rules. As to the "practical requirements", he has served articles of clerkship of "not less than 1 year's satisfactory service" in all, with two well-known Territory legal practitioners, Mr Avery and Mr Stirk. He was articled to Mr Avery for some 7½ months from 15 January to 3 September 1995, and to Mr Stirk from 4 September 1995 to date.

Under s15 of the Act and r21 the Law Society may object to an application for admission. Ms Elliott for the Law Society objected to the application, on the sole basis that Mr Avery was not a "legal practitioner ... practising ... on his ... own account or in partnership" during the applicant's period of articles with him; that is to

say, Mr Avery was not a person with whom the applicant could properly enter into articles of clerkship during that period, in accordance with r22(1)(a, and the applicant accordingly had failed to comply with r8(c). The submissions were as follows.

Mr Avery held (and holds) an unrestricted practising certificate, but at the relevant time he was (and is) employed by the Central Land Council. This appears from his application for a practising certificate for 1994-5, and his accompanying letter to the Legal Practitioners' Admission Board of 27 September 1994, tendered in evidence. Since Mr Avery was a solicitor employed by the Land Council he was not "practising ... *on his own account* or in partnership" as required by r22(1)(a), and he did not fall within any of the other provisions of r22.

Mr Stirk of counsel for the applicant noted that the Board had certified on 31 January 1996 that in its opinion the "applicant has complied with the practical requirements for admission". Clearly, the Board was of opinion that Mr Avery fell within r22(1)(a). Indeed, on 2 March 1995 the Board had formally approved the applicant's "entry into articles with Mr Avery as from 15 January 1995." I note that in Mr Avery's certificate under r30 relating to the applicant's satisfactory service as an articled clerk, he describes himself as "a barrister and solicitor practising on my own account".

I accept that the Board's opinion that Mr Avery met the requirements of r22(1)(a) must be given due weight. However, I consider that the Board's opinion cannot be definitive of the proper meaning of the words emphasised in r22(1)(a) on p2.

Mr Stirk referred me to in *Re Mallett* (1989) 95 FLR 63. In that case the Full Court held that the Board's certificate under r20 should almost invariably be accepted by the Court as evidence of what it states. In the circumstances of that case the

Court considered that it need not go beyond what the Board had certified as to the applicant having attained a level of education in law sufficient for the purposes of gaining admission as a solicitor of the Supreme Court of Queensland. I note that in that case there was no question but that the applicant had the requisite practical experience, gained under proper tutelage.

Mr Stirk also referred me to *Re Nelson* (1994) 98 NTR 17. In that case the applicant had served in Queensland 3.7 months of the required 12 months articles, to a Queensland solicitor who held an unrestricted practising certificate in the Northern Territory. The Board considered that the Rules required that the full year of articles be served in the Territory. The Court held that under r22(1)(a) the master solicitor must actually practise in the Territory; obiter, he or she need not practise solely in the Territory. It can be seen that *Re Nelson* (supra) dealt with a different aspect of r22(1)(a).

Mr Stirk submitted that Mr Avery met the requirements of r22(1)(a), and therefore the applicant met the requirements of r11(1)(a). Alternatively, in all the circumstances the period of articles required should be reduced by the exempting provisions of r11(3) or under r25(2) to the 5-months period which the applicant had served with him.

Mr Stirk pointed out that various legal practitioners had already been admitted to practise, on the basis of articles served wholly or partly with Mr Avery while he was employed by the Central Land Council. He also submitted that there was an apparent anomaly as follows. Section 25(1) of the Act deals with limitations on the issue of unrestricted practising certificates. It provides, inter alia, that service for 2 years with certain prescribed organisations "in the performance of work of a legal nature" is sufficient to gain an unrestricted practising certificate. Both the Northern

Land Council and the Central Land Council are included in the ten "departments, bodies and organisations" prescribed for that purpose by reg2B of the Legal Practitioners Regulations.

Conclusions

The situation which has come to light in this application is very unfortunate. It should be said immediately that the applicant is in no way to blame; nor, really, is anyone. Undoubtedly, what has occurred has simply grown up like Topsy. In part, it is no doubt due to the high standing of Mr Avery for nearly 23 years in the Territory legal profession. The situation is unfortunate because I consider it is clear that because Mr Avery is employed by the Central Land Council he does not qualify as a master solicitor in terms of r22(1)(a); that is, while he is so employed he does not fall within the description of a "legal practitioner ... practising as a solicitor or barrister and solicitor on his ... own account or in partnership." As the holder of an unrestricted practising certificate, Mr Avery is of course entitled to practice "on his own account or in partnership"; see the definition of "unrestricted practising certificate" in s6 of the Act.

Although counsel were not able to refer me to any authorities on the meaning of the phrase "practising ... on his ... own account" in r22(1)(a), it seems clear enough that it refers only to a legal practitioner carrying on legal practice in the community as a sole practitioner. Like the elephant, such a person is readily recognisable; reference to practising "on his own account" appears in several places in the Act e.g. ss8, 22(1), 25(1)(e) and 27(1)(k). In its context in r22(1)(a) it connotes the common conception of a legal practitioner in private legal practice who holds himself out to the general public as willing to act as a direct and responsible personal

confidential legal adviser, and to do and be directly responsible for, legal work generally, and who has clients for whom he does legal work in that way; see generally *Downey v O'Connell* [1951] VLR 117 at 122-3, per Gavan Duffy and O'Bryan JJ. A solicitor employed by a corporation does not fall into that category; I note that Land Councils are bodies corporate under s22 of the *Aboriginal Land Rights (Northern Territory) Act 1976 (C'th).* Their functions are basically land-oriented; see s23 of that Act. It may be inferred that the Land Councils are not regarded as having work of a general legal character sufficient to justify their inclusion with the persons listed in pars(b)-(e) of r(22)(1) as entities suitable to provide the necessary practical training and experience in legal skills to an articled clerk. I accept that when the persons listed in r22(1)(b)-(e) are compared with the entities listed in reg2B it may be thought that the absence of the Councils from r22(1) is anomalous; in view of the different aims of r22(1) and reg2B it is not self-evident to me that this is necessarily so.

I am fully conscious of the need to adhere very firmly to the requirements of the Rules in light of the provisions for uniform admission to practise throughout Australia; the Rules are the Territory component of that system. Nevertheless, examining carefully this particular case and the background and experience of the applicant, including that gained in his time with Mr Avery I consider that I can safely reach the opinion that he has had experience in the practice of the law in Australia other than that required by r11(1)(a), to the extent that I can properly grant him partial exemption from that provision. In his particular case, in the light of his background and the experience he has gained I consider that the period of articles he has served with Mr Stirk to date is sufficient, and he is exempted from compliance with the residue of the 12 months period prescribed by r11(1)(a). Alternatively, I would reduce the period

of his articles to those he has served with Mr Stirk, pursuant to r25(2). I stress that this is very much a decision on the facts of the particular case and in no way should be seen as a precedent on which any other applicant might seek to rely.

It follows that lawyers employed by Land Councils in the Territory should no longer 'take on' articled clerks, as the Rules presently stand.

For these reasons I granted the application of 18 January 1996, and admitted the applicant to practise.
